

Respondent contends Judge Foerschler erred. Respondent argues claimant failed to prove his current low back and leg complaints are due to his January 2006 work-related injury. Respondent also argues it is more likely that claimant aggravated his low back by the work he has performed as a self-employed truck driver since being released from medical treatment in August 2006 and, therefore, claimant should seek medical treatment from his present workers compensation insurance carrier. In short, respondent requests the Board to deny claimant's request for additional medical benefits.

Conversely, claimant requests the Board to affirm the May 2, 2008, Post-Award Medical Award. Claimant states the surgery he underwent in May 2006 helped the symptoms he was experiencing down into his right leg but the surgery never resolved the pain in his low back or the symptoms down into his left hip and left leg. And those symptoms have progressively worsened since his surgery despite the fact claimant has carefully protected his back from further injury.

The only issue before the Board on this appeal is whether claimant's present need for surgery emanates from his January 2006 occupational injury or whether claimant has sustained an intervening injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds:

The parties stipulated claimant injured his low back in January 2006 when he slipped and fell while working for respondent as a propane truck driver. Approximately 16 years before, claimant had undergone low back surgery at the L4-5 and L5-S1 intervertebral levels. According to Dr. Adrian P. Jackson, who began treating claimant in April 2006, claimant's January 2006 accident caused a recurrent disc herniation at the L4-5 level.

In May 2006, Dr. Jackson performed a revision discectomy at L4-5 and revision laminectomies at both L4-5 and L5-S1.¹ The doctor treated claimant through July 26, 2006, when he released claimant from medical treatment. The doctor acknowledges claimant was experiencing ongoing low back pain at the time of his release. Nevertheless, in August 2006 the doctor released claimant without any work restrictions.

In September 2006, at his attorney's request, claimant was examined by Dr. Edward J. Prostatic, an orthopedic surgeon. At that time claimant reported he had almost

¹ Jackson Depo. at 6.

constant pain across his low back and frequent pain, numbness, and tingling into his left leg and foot. Claimant also reported to the doctor that his symptoms worsened with bending, standing, and squatting and that he was reluctant to do significant pushing, pulling, or lifting. As a result of that evaluation, Dr. Prostin recommended additional physical therapy and medications.

Claimant returned to Dr. Jackson in early June 2007 because of his ongoing low back and left lower extremity symptoms, which claimant contends have progressively worsened since his May 2006 surgery. The doctor determined claimant's present complaints were more consistent with an S1 radiculopathy.

Dr. Jackson's July 30, 2007, medical notes contain the following, which fairly summarizes the history of claimant's left lower extremity symptoms:

Mr. Earnest returns after his MRI with and without contrast of the lumbar spine. In summary, Mr. Earnest underwent a revision discectomy at L4-5 approximately 15 months ago. He did have dramatic relief of his bilateral lower extremity symptoms and became much more functional following the revision decompression. He did, however, have some residual left lower extremity pain that did not go away following the surgery. This pain has been quite persistent and radiates down the buttock region posterior thigh, posterior calf and into his left heel. Mr. Earnest is a stoic individual, who has tolerated the symptoms for greater than a year prior to requesting re-evaluation.²

When asked whether claimant had done something that had aggravated his back, Dr. Jackson stated he did not know. The doctor testified, in part:

Q. (Mr. King) In your opinion, then, did some activities he had done since you had released him in July of '06 apparently cause an aggravation of the underlying condition, within a reasonable degree of medical probability?

A. (Dr. Jackson) That's really hard for me to say. All I can give you an opinion on is the fact he was having an ongoing problem. I don't know what caused the ongoing problem, I wasn't with him every day. I just know that he had an ongoing issue that was worsening.³

In addition, Dr. Jackson could not say within a reasonable medical certainty whether claimant's increased low back and left lower extremity symptoms are the natural consequence of his January 2006 accident and resulting low back injury or, instead, the

² *Id.*, Ex. 2.

³ *Id.* at 12, 13.

result of a new injury or accident.⁴ The x-rays of claimant's low back that Dr. Jackson had taken in 2007 do not reveal any evidence of a new injury or, for that matter, any changes from 2006. The doctor did confirm, however, that in 2006 claimant had a broad-based disc bulge at L5-S1, which the doctor did not operate as claimant's symptoms at that time were more consistent with a herniated disc at L4-5.

Following his evaluation of claimant in 2007, Dr. Jackson concluded claimant had aggravated his underlying low back condition at L5-S1. Consequently, the doctor recommended a nerve root block to help make a definitive diagnosis.

Dr. Prostic evaluated claimant a second time in September 2007. Claimant reported increased pain in his left hip and radiating pain down into the foot. Dr. Prostic found significant hypertrophy of the L5-S1 facet on the left that had caused lateral recess stenosis. Moreover, the doctor concluded claimant's symptoms and low back problem were a natural progression of the January 2006 injury.⁵ The doctor testified, in part:

It's my opinion that every day that he gets older, his degeneration progresses a little bit more and that he becomes anatomically a little bit different and has some propensity to getting symptoms from those anatomic problems. It is hard to know whether it's the truck driving that causes the permanent worsening versus the natural progression of the degenerative condition.⁶

Based upon the fact that he did have S1 radicular symptoms in '06 and that undoubtedly the hypertrophic facet at L5-S1 was hypertrophic in '06, it seems to me to be the natural progression of the disease from '06 rather than a distinct new injury.⁷

Assuming the patient's statements to me were true, that he suffered no additional injuries since the previous examination by me, then it is my opinion that more probably than not, his current condition is predominantly caused by the natural progression of his disease that was caused or aggravated by the 2006 accident.⁸

⁴ *Id.* at 37.

⁵ Prostic Depo. at 14.

⁶ *Id.* at 21, 22.

⁷ *Id.* at 22.

⁸ *Id.* at 25, 26.

Respondent terminated claimant's position and did not permit him to return to work following his surgery. After first trying to find a job, claimant purchased a truck and in August 2006 began hauling cattle, grain, and hay. In either November or December 2007, claimant stopped working as a self-employed cattle truck driver due to his worsening symptoms. Claimant denies sustaining any additional accidents following his surgery and release to return to work. Moreover, he was warned that falling down or being jarred could possibly paralyze him and, therefore, he has been very careful in what he does.

The Workers Compensation Act requires an employer to provide an injured worker with the medical treatment that is reasonable and necessary to cure and relieve the injured worker from the effects of the injury. Kansas law is also well-settled that every natural and direct consequence that flows from a compensable injury is also compensable under the Act.⁹ And once an injury is established as work-related, the progression of that condition remains compensable so long as the worsening is not shown to have been produced by a new and independent accident.¹⁰

Claimant's testimony is credible that his symptoms gradually worsened to the point he sought additional medical treatment and later to the point he could no longer work. Claimant's testimony is also credible that he was very careful in his work activities and had others assist him when necessary. In short, claimant's May 2006 surgery did not resolve the symptoms in his low back, left hip, and left leg, which have gradually worsened over time. And the evidence fails to establish that claimant sustained an intervening accident that would relieve respondent from its liability in this claim.

Consequently, claimant is entitled to receive additional medical treatment in this claim at respondent's expense. The May 2, 2008, Post-Award Medical Award should be affirmed.

AWARD

WHEREFORE, the Board affirms the May 2, 2008, Post-Award Medical Award entered by Judge Robert H. Foerschler.

IT IS SO ORDERED.

⁹ *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

¹⁰ *Nance v. Harvey County*, 263 Kan. 542, 952 P.2d 411 (1997).

Dated this ____ day of June, 2008.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Dennis L. Horner, Attorney for Claimant
Jeffrey E. King, Attorney for Respondent and its Insurance Carrier
Robert H. Foerschler, Administrative Law Judge